IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3128 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAUSHALKUMAR VINODSINH ZALA

Versus

TECHNICAL EXAMINATION BOARD GUJARAT STATE

Appearance:

1. Special Civil Application No. 3128 of 2005

MR MEHUL SHARAD SHAH for Petitioner No. 1

MR HD DAVE, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/04/2005

ORAL JUDGEMENT

#. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the

legality and validity of the order passed by the respondent - Technical Examination Board, Gujarat State, Gandhinagar dated 11.1.2005 by which the result of the petitioner of all the theory examination conducted in the month of November - December 2004 is cancelled and the petitioner is further debarred from appearing in two future examinations of the Board.

#. It appears from the record that the petitioner has appeared in the final examination of the First Year Diploma in Mechanical Engineering held in November December 2004 and while examining the answer books, it was found that answers given by the petitioner and that of one another student whose seat number was 1022803245 were tallied with each other, and, therefore, it was found that both the students have copied from each other and they have committed misconduct, and, therefore, a show cause notice came to be issued upon the petitioner as well as another student on 21.12.2004 and the petitioner was directed to show cause as to why the result of the petitioner of examination taken in November - December 2004 should not be cancelled as per Section 15 and that the petitioner should not be debarred from appearing in future examinations. After giving opportunity to the petitioner and recording his statement, the respondent by order dated 11.1.2005 passed the order cancelling the result of the petitioner of November - December 2004 examination and debarred the petitioner from appearing in future two examinations which is the subject matter of the present petition.

#. Mr.Mehul Sharad Shah, learned advocate appearing for the petitioner, has vehemently submitted that, in fact, there is no evidence against the petitioner by which it can be said that the petitioner has allowed another student to copy from his answer book and that considering the facts and circumstances to impose punishment of further debarring the petitioner for two examinations in future is harsh and disproportionate to the charges levelled and the misconduct alleged against the petitioner. It is submitted that the case of the petitioner cannot be equated with that of another student who has in fact, admitted that he was copying from the petitioner's answer book. It is further submitted that so far as the petitioner is concerned, it was specifically the case of the petitioner before the authority that the petitioner has not allowed the another student to copy from his answer book and in the facts and circumstances of the case, the petitioner will be satisfied if the punishment is reduced by debarring the petitioner from appearing in only one future examination

rather than two examinations in future.

#. Mr.Dave, learned A.G.P. has submitted that in fact another student has already admitted that he has copied from the petitioner's answer book and that when it is found that answers in both the answers book are tallied with each other, the petitioner is also equally responsible and therefore punishment which is imposed is just and proper and is not disproportionate and to harass as alleged. It is further submitted that in fact there is statement of the examiner also to the effect that answers in both the answer book are tallied and therefore the petitioner has also allowed the another student to copy from his answer book. Therefore, it is requested to dismiss the present petition.

#. Heard the learned counsel for the parties.

#. It is required to be noted that in the show cause notice dated 21.12.2004 in fact, there is no reference and the petitioner is not given opportunity to show cause for how much period or for how many examinations in future the petitioner is required to be debarred. It is further required to be noted that as such there is no evidence on record to show that in fact, the petitioner has allowed the another student to copy from his answer book. So far as the examiner's statement is concerned, in view of the fact that the examiner was not present at the time when the examination was going on and therefore it is not possible for the examiner to come to the conclusion that it is the petitioner who has allowed another student to copy from his answer book. It is true that so far as another student is concerned, there is an admission on his part that he has copied from the petitioner's answer book, however, in absence of any further material and / or evidence to show that the petitioner has also allowed the another student to copy from his answer book and / or he has helped another student to copy, the case of the petitioner cannot be equated with that of another student who seems to have been punished and debarred from appearing in two future examinations.

#. Considering the facts and circumstances of the case and the concession given by the learned advocate appearing for the petitioner, it appears that the punishment debarring the petitioner from appearing from future two examinations seems to be harsh and disproportionate considering the facts and circumstances of the case and the allegations levelled against the petitioner, under the circumstances, instead of debarring

the petitioner from appearing in future two examinations, if the petitioner is debarred from appearing in only one future examination, it will meet with the ends of justice. Under the circumstances, the impugned order dated 11.01.2005 is modified to the extent that instead of debarring the petitioner from appearing in two future examinations, the petitioner is debarred in appearing in only one future examination, meaning thereby, the petitioner is permitted to appear in the examination to be held in November / December, 2005. It is, however, made clear that so far as rest of the punishment is concerned, the same is confirmed.

#. For the reasons stated above, the petition is partly allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(M.R.Shah,J)

(pathan)